



**US Army Corps
of Engineers**®

St. Paul District

www.mvp.usace.army.mil

Public Affairs

Corps Facts

Regulatory Enforcement

Sept. 13, 2006

FS-13

Corps of Engineers' Regulatory Program

In addition to regulating structures, dredging and fill in traditionally navigable waters under Section 10 of the Rivers and Harbors Act of 1899, the Corps of Engineers administers Section 404 of the Clean Water Act (33 U.S.C. §1344). Under Section 404, the Corps issues permits for the discharge of dredged or fill material into waters of the United States, which includes traditionally navigable waters, their tributaries and adjacent wetlands.

Enforcement

The St. Paul District's regulatory branch actively pursues enforcement of the Clean Water Act to ensure that permit applicants comply with the conditions of their permits and that unauthorized activities do not occur. The Corps' enforcement authority comes from Section 309 of the Clean Water Act (33 U.S.C. §1319 and 33 CFR §326). The Corps can refer cases to the Environmental Protection Agency, which can assess administrative penalties up to \$127,500, or to the U.S. Attorney's Office for civil or criminal penalties and injunctive relief, including restoration of the site. Generally, cases referred to EPA or the U.S. Attorney are those that are willful, repeated, flagrant or of substantial impact to waters of the United States. If administrative or legal enforcement action is not warranted (e.g., a violation involving a first-time violator with minor environmental impact), the Corps may accept an after-the-fact application for a permit to retain the illegal fill. After-the-fact permit applications are reviewed using the same procedures and criteria as those used to evaluate any other application; and if a permit is issued, it may require mitigation to compensate for the loss of waters of the United States. If the permit is denied, the district engineer may order restoration of the illegally filled wetlands.

Litigation

St. Paul District was recently involved in two enforcement cases litigated by the U.S. Attorney's Office in the Western District of Wisconsin. Paul A. Heinrich had illegally constructed a seaplane access road through forested wetlands adjacent to Little Star Lake in Vilas County, Wis. Judge John C. Shabaz ordered him to restore the wetlands and pay a \$75,000 fine. In a separate case in Monroe County, Wis., developer Pete Thorson illegally filled a wetland adjacent to Deer Creek. Judge Barbara B. Crabb found both Thorson and his contractor, Gerke Excavating, liable for violating the Clean Water Act. Thorson agreed to restore the wetlands and pay a \$105,000 penalty. Judge Crabb assessed Gerke a \$55,000 civil penalty, determining the best way to penalize Gerke was to use the amount of money it would have earned on the entire contract, not just the profits it would have received. In assessing this penalty, the judge noted that she hoped the rationale for and the size of this penalty would "capture the attention of contractors in Wisconsin" and serve as a significant deterrent if contractors know they will have to forfeit the proceeds from a contract if they violate the CWA.

St. Paul District is currently cooperating with the U.S. Attorney's Office in Minneapolis on two new enforcement cases in Minnesota.